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Letter dated 14 May 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and the Prosecutor (see annex II) of the International Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I should be grateful if you would transmit these assessments to the members of the Security Council.

(*Signed*) Patrick **Robinson**
President

09-34179 (E) 280509

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Annex I

[Original: English and French]

Assessment and report of Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004), covering the period from 15 November 2008 to 15 May 2009

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1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph six of the resolution, requested the International Tribunal for the Former Yugoslavia ("International Tribunal") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the International Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".[1]

[1] The present report should be read in conjunction with the previous 10 reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007; S/2007/663 of 12 November 2007; S/2008/326 of 14 May 2008; S/2008/729 of 24 November 2008.

I. Introduction

2. Out of the 161 accused indicted by the International Tribunal, only six accused remain in the pre-trial stage awaiting the commencement of their trials.[2] Only two accused, Mladić and Hadžić, are still at large.[3] A total of 21 accused are presently on trial,[4] and another 13 have appeals pending.[5] All other cases have been completed.

3. There are four cases in pre-trial proceedings. They will all start this year, but the trials of the two who were only recently arrested will not be completed until 2011 and early 2012. There are seven cases at the trial stage. Five of them will end this year,[6] another early in 2010, and the last — the most complex of the multi-accused trials — is currently estimated to run into early 2011.[7]

4. The slippage in the trial schedule results from a number of factors that are not immediately within the control of the Tribunal. The delay in the completion of trials naturally has ramifications for the expeditious completion of appellate activity. Taking into account an anticipated 17 new appeals from the International Criminal Tribunal for Rwanda, coupled with translation problems, it is now anticipated that the completion of all appeals will not be prior to 2013.[8] I note that a number of the anticipated appeals result from cases earmarked for transfer under Rule 11 *bis* being refused transfer due to a lack of capacity on the part of the receiving State. While criticism may be made of the international community for its failure to ensure capacity on the part of local courts in Rwanda, perhaps more troubling is the lack of capacity present in European countries to which the Tribunal for Rwanda had also sought to transfer cases pursuant to Rule 11 *bis*.

5. The estimate for the completion of all appeals is subject to a number of factors that can impinge on the expeditious completion of trials and appeals, which are discussed in more detail later in this report. But also, to meet the target date of mid-2013, there will need to be a significant redeployment of Trial Chamber resources to the Appeals Chamber during 2010 and 2011. An assessment made by the Tribunal identifies as necessary the transfer of four Judges of the Tribunal for the Former Yugoslavia and four Judges of the Tribunal for Rwanda to the Appeals Chamber in 2010 and 2011. This will allow the Tribunal to form three Appeals Chamber benches to deal with an anticipated total of 24 appeal cases. Under this scenario, each appellate Judge would be assigned six or seven appeals. Thirteen appeals will be disposed of in 2011; and eight appeals in 2012. Nine appeals Judges would complete their appeals in 2012, and six appeals Judges would complete their work in the remaining three appeals during the first half of 2013. Alternatively, a smaller number of Judges could be redeployed, allowing the Appeals Chamber to form two benches to deal with the appeals. To accommodate issues of contamination, five Judges would need to be redeployed to make up two benches of five Judges. Under this scenario, each Judge would on average sit on 9 to 12 cases.

[2] Enclosure IV.
[3] Enclosure III.
[4] Enclosure II.
[5] Enclosures V-VII.
[6] It is possible that the *Šešelj* case will go into 2010.
[7] Enclosure VIII.
[8] Enclosures IX and X.

Six appeals would be disposed of in 2011; eight appeals in 2012; and 10 appeals in 2013. The 12 appeals Judges would be expected to work until the end of 2013.

6. Under either scenario, it is essential that it is understood that a redeployment of resources to the Appeals Chamber is part of the Tribunal's downsizing strategy and that the number of Judges overall will actually decrease in 2010 and 2011. It is anticipated that all *ad litem* Judges will have departed the Tribunal in 2010 and 2011 and that four permanent Judges will also depart in 2010 and 2011. The departure of these Judges and corresponding staff will reflect a significant decrease in the Tribunal's budget.

7. I note that Security Council resolution 1837 extended the terms of office of the Tribunal's trial and *ad litem* Judges until 31 December 2009, and its current appeal Judges until 31 December 2010. This is clearly not sufficient. A request will be made to the Security Council to remedy this situation, and an expeditious resolution of that request will be of great assistance to the Tribunal in the efficient scheduling of its workload.

8. During the reporting period, one Trial Judgement was rendered. The Trial Chambers continued to perform at maximum capacity in relation to trial proceedings, with seven trials being heard simultaneously, and during some periods, eight trials being heard. The Tribunal only has three courtrooms and holds two separate sittings in each from early morning into the evening. Both the seventh and eighth trials took advantage of periods when the other six cases were not being heard. Routine hearings in pre-trial and appeals cases, such as status conferences and appellate oral arguments, were sometimes conducted in the very early morning to avoid disrupting the trial schedule.

9. Delay to the expeditious conduct of some trials was caused by contempt allegations arising from those proceedings. These allegations include the intimidation and bribery of witnesses and the illegal disclosure of confidential information of both States and witnesses. One trial has even been suspended pending the resolution of the contempt issue arising therein, so as to protect the integrity of those proceedings. The effect of the persistent contempt of the Tribunal is discussed in more detail below.

10. During the reporting period, two Appeal Judgements were rendered. Only five appeals are currently pending. The Appeals Chamber continued to work at maximum capacity in relation to appeals from both the Tribunal for the Former Yugoslavia and the Tribunal for Rwanda, rendering 14 interlocutory appeal decisions and several other appeals.[9]

11. As was made clear in my last report to the Council, the Tribunal has transferred all low- and mid-level accused from its trial docket in accordance with Security Council resolution 1503 (2003). Of those referred proceedings still ongoing in the region, the Prosecutor, with the assistance of the Organization for Security and Cooperation in Europe (OSCE), continues to monitor their progress. Additionally, the bench constituted to handle requests for confidential information for use in national proceedings continued to function in an efficient manner, rendering 14 decisions during the reporting period.

[9] Enclosures V-VII.

II. Measures taken to implement the Completion Strategy

12. The various measures that have been adopted by the Trial and Appeal Chambers to ensure the fair and expeditious conduct of the matters before them are best viewed in the specific conduct of each case. What follows below is a brief summary of those proceedings, challenges in connection with them, and the solutions that have been implemented in order to meet these challenges.

A. Pre-trial proceedings

13. A development impacting the Completion Strategy was the extremely late arrest on 18 July 2008 of the fugitive Radovan Karadžić. Following his transfer to the Tribunal on 30 July 2008, the accused made an initial appearance on 31 July 2008 and a further appearance on 29 August 2008. His further appearance to an amended indictment was held on 3 March 2009, he refused to plead, and so a plea of not guilty to all counts was entered on his behalf. The accused has thus far insisted on serving as his own counsel; and, as a result, until a decision of the pre-trial Chamber finding that he was able to understand English, all documents in the case, which normally only have to be in English or French, had to be translated into the Bosnian/Croatian/Serbian language, significantly slowing down the proceedings. It is also notable that, despite the fact that the accused insists on serving as his own lawyer, he in fact has a defence team behind the scenes, which is remunerated by the Tribunal, as well as several *pro bono* advisers, many of whom have been involved in drafting a significant number of pre-trial motions. Nevertheless, the case is anticipated to commence in August 2009, with a projected trial length of 30 months.

14. It should be noted that, if fugitive Mladić is arrested now, his case may be joined with that of Karadžić. Further delay in his arrest will in all likelihood result in the need for separate trials. The difficulties for the completion of the Tribunal's work that the late arrest of fugitives has caused — and continues to cause — cannot be overstated.

15. Following the Chamber's decision of 23 September 2008 granting leave to the Prosecution to join the cases of Mićo Stanišić and Stojan Župljanin, a consolidated indictment was filed containing allegations against both accused. On 6 January 2009, Župljanin's motion for the joinder of his case with Karadžić's case was denied because of the delay it would cause. On 19 March 2009, the Chamber dismissed both accused's challenges to the form of the consolidated indictment. There are currently no issues impacting the expeditious conduct of the trial, which is expected to commence in July 2009.

16. In the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, the two accused are charged with four counts of crimes against humanity and one count of war crimes. The commencement and progress of this trial has been significantly delayed due to the poor health of Stanišić. Originally intended to start in March 2008, the trial was delayed until the end of April 2008. Hearings to examine medical experts and to hear arguments on the future management of the trial were held in early April 2008, and a decision was issued on the future course of the proceedings, establishing a videoconference link with the United Nations Detention Unit for use by Stanišić. On 28 April, the pre-trial conference was held and the trial commenced, with opening statements being heard in Stanišić's absence. Stanišić refused to utilize

the videoconference link; and, after one witness was heard, the proceedings were again adjourned due to Stanišić's physical illness and subsequent hospitalization. In May 2008, the Appeals Chamber issued a ruling overturning the Trial Chamber's decision to establish the videoconference link and granted the defence request for adjournment of the proceedings for a minimum period of three months. The case was effectively returned to the stage of pre-trial proceedings. Following the receipt of medical reports, the Trial Chamber decided to extend the adjournment for another three months and ordered a further review and submission of additional medical reports at the end of that time. These reports were received in March 2009 and resulted in a finding that the proceedings could continue with accommodation of Stanišić's health needs. A pre-trial conference is scheduled for 18 May 2009, and opening statements begin on 25 May 2009. The presentation of the Prosecution's case commences on 2 June 2009.

17. The case against Zdravko Tolimir is at an advanced stage of preparation for trial. To enhance the expeditious trial readiness of this case, the Pre-Trial Judge set deadlines for the Prosecution to file its pre-trial brief no later than 28 November 2008, any motions for admission of written evidence in lieu of oral testimony, and any motions for judicial notice of adjudicated facts no later than 13 February 2009. Tolimir had raised the issue of the illegality of his arrest, and litigation over this issue has caused delay to some extent in that the issue has been raised at every status conference so far, with the Chamber having to issue three written decisions rejecting Tolimir's claims. These decisions were then upheld on appeal. The main issue impacting the expeditious preparation of the case is that the accused has thus far elected to represent himself. At status conferences, the Pre-Trial Judge has encouraged the accused to reconsider his choice to defend himself. Due to his self-representation, all documents served on the accused, including the parties' submissions and decisions and orders, have to be translated into the Bosnian/Croatian/Serbian language. This has had a significant impact on the expeditious preparation of the case. Nevertheless, the trial should be ready to commence in late summer.

18. It should be noted that, if Tolimir had been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Popović et al.* trial, but now he will have to be tried alone.

B. Trial proceedings

19. The Tribunal's commitment to meeting its Completion Strategy is demonstrated through the adoption of concrete measures to enhance the efficiency of proceedings. Many of these measures were identified by the Working Groups on Speeding up Appeals and Trials, which were reconstituted in 2008 to assess the effectiveness of measures implemented and to identify fresh innovations to enhance the efficient conduct of trials and appeals. The best illustration of the impact of these measures is provided in the synopses of the cases below.

20. The multi-accused case of *Milutinović et al.* — with six accused — contained five counts of war crimes and crimes against humanity allegedly committed by Serbian forces in 15 municipalities of Kosovo in the period between 1 January to 20 June 1999. The Prosecution case closed within the prescribed time on 1 May 2007. The Trial Chamber restricted the time allowed for the presentation of the

defence case, as it had previously done with respect to the presentation of the Prosecution case. The evidence presented by the parties in the case ended on 16 May 2008. Thereafter, the Chamber invited evidence from Chamber witnesses. Efforts to obtain the testimony of one of these witnesses required intervention due to a failure of cooperation by the Government of Serbia. When this lack of cooperation was reported to the Security Council, Serbia acted to serve the subpoena on the witness, who eventually testified on 8 and 9 July 2008. This unfortunate situation delayed closing arguments in the case, which ended on 27 August 2008. Initially, it had been anticipated that the Judgement would be rendered in September 2008; however, due to the immense complexity of the issues involved in the case and the volume of evidence adduced by the parties during the trial, the Judgement was delayed by five months and rendered on 26 February 2009. The Trial Chamber, in the longest Judgement to date, acquitted one accused of all charges and convicted the other five accused.[10]

21. The multi-accused case of *Prosecutor v. Prlic et al.* — with six accused — is an exceptionally complicated case involving 26 counts of war crimes and crimes against humanity, related to approximately 70 crime sites, allegedly committed by Bosnian Croats against Bosnian Muslims in Bosnia and Herzegovina between the period of 18 November 1991 to about April 1994. The trial opened on 26 April 2006, with the original estimate for the length of trial being three years. When the Chamber became aware that this time would likely be insufficient for this unusually complex case, the Chamber reduced the Prosecution case by 25 per cent and then limited the presentation of the defence cases to even less time than the Prosecution received. Translation issues, the logistics of defence witness attendance, and the poor health of several of the accused have all led to further delays. In an effort to off-set this situation, the Chamber has encouraged the defence to admit evidence in writing, has strictly enforced the time limits upon the defence, has discouraged duplicative evidence, and has entertained defence motions for the admission of documents from the bar table rather than requiring each document to be admitted through a witness on the stand, thus saving time in court. The Trial Chamber has also imposed time limits on the parties for the filing of motions for reconsideration of decisions, in order to manage the proceedings even more efficiently. Based on the complexity of the case, it is anticipated at this stage that hearings will run into 2011.

22. The multi-accused case of *Popović et al.* — with seven accused — contains eight counts, including charges of genocide and crimes against humanity, allegedly committed at 20 different crime sites. The original estimate for the length of the trial was 29 months, and the Trial Chamber has continued to take action to expedite the proceedings. At the pre-defence conference on 22 May 2008, the Trial Chamber raised with the defence the possibility of reducing the length of their cases, and subsequently some witnesses were dropped, while the testimony of others was shortened by the admission of their evidence in writing. Consequently, the total number of in-court witnesses testifying during the defence cases was substantially fewer than had been notified in the defence witness lists. The defence cases of the seven accused were completed on 14 March 2009. On 27 March, the Trial Chamber ordered that final trial briefs were to be filed by 30 June 2009 and closing arguments heard from 20 July 2009. There have been no major delays so far, and there has been steady progress in the trial since its commencement in August 2006. The case

[10] Enclosure I.

will have lasted somewhat longer than originally anticipated, essentially because of the trial's unusual size (seven accused) and complexity (for example, the number of alleged forces involved and over 7,000 alleged victims), but is still scheduled to finish in late 2009.

23. The multi-accused case of *Prosecutor v. Ante Gotovina et al.* — with three accused — contains crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia in 1995 and commenced on 11 March 2008. The Prosecution's presentation of evidence was concluded on 5 March 2009, after hearing 78 witnesses. The Prosecution tendered witness statements in lieu of oral testimony for 72 of the 78 witnesses. This, and the fact that the Prosecution decided not to call more than 30 witnesses on its original witness list, enabled it to stay well within the hours allotted by the Trial Chamber for the presentation of its evidence. Significant time, however, was still required for cross-examination by the three defence teams. There has been extensive litigation regarding requests for documents from Croatia. Although this matter has absorbed a great deal of resources on the part of the parties and the Chamber, it has been managed so that any impact upon the trial schedule will be negligible. Trial proceedings are still estimated to be completed within the anticipated total duration of 18 months, with the Judgement to be rendered in October 2009. A pre-defence conference is scheduled for 27 May 2009, and presentation of the defence cases, if any, commences on 28 May 2009.

24. In the case against Vojislav Šešelj, the accused is charged with 14 counts of crimes against humanity and violations of the laws or customs of war allegedly committed in the territory of Croatia, in large parts of Bosnia and Herzegovina, and in Vojvodina (Serbia), from August 1991 until September 1993. The first Prosecution witness was heard on 11 December 2007. Of the 100 witnesses scheduled by the Prosecution, the Trial Chamber has thus far heard 72 witnesses. The trial, which was scheduled to take 14 months, is now anticipated to take 21 months, due to unforeseen difficulties experienced since the commencement of trial, including a motion for disqualification of one of the Judges and difficulties experienced by the Prosecution in getting witnesses to testify. In order to expedite the proceedings, the Trial Chamber decided to make use of evidence in writing for at least 15 witnesses, and this despite the constant refusal of the self-represented accused to accept this process and to cross-examine any witness whose testimony is presented in writing under the Rules of Procedure and Evidence. However, further delays are expected given that the Trial Chamber has adjourned the hearing of a number of Prosecution witnesses due to allegations of witness intimidation. These contempt proceedings are ongoing.

25. The trial of Momčilo Perišić began on 2 October 2008. The accused is charged with 13 counts in relation to crimes against humanity and violations of the laws or customs of war allegedly committed in Sarajevo, Zagreb, and Srebrenica. After aggressive pre-trial management of this case, which resulted in a 60 per cent reduction of the Prosecution case-in-chief, the estimate for the trial was set at 24 months. The unavailability of Prosecution witnesses was causing some difficulties, but the Chamber's intervention with the parties and the Victims and Witnesses Section remedied the situation through a change in the manner in which witnesses were scheduled. The Prosecution is also using written evidence in lieu of oral testimony in order to reduce the length of the trial, and the Trial Chamber has granted several Prosecution motions for judicial notice of adjudicated facts to further streamline the case. Additionally, the Chamber admitted into evidence the

testimony of 14 witnesses without requiring them to appear for cross-examination. The 24-month projection is still accurate, with the Judgement to be delivered in October 2010.

26. The *Lukić and Lukić* case commenced on 9 July 2008, and witnesses were heard before the summer judicial recess. The Prosecution case closed on 11 November, and the first defence case was heard and completed in early December 2008 with three witnesses heard in two days. The second defence case commenced before the winter recess and closed on 21 April 2009 after presenting 28 witnesses. Closing arguments will be heard on 19 May 2009. The Prosecution concluded its case in shorter time than allotted, and the presentation of one of the accused's cases was exceptionally brief. The presentation of the case of the other accused took longer than expected due to a number of adjournments granted at the request of the defence to allow additional time for preparation and at the request of the Prosecution to allow time to investigate allegations of bribery and interference with witnesses. The Chamber has taken steps to minimize the impact of these events and maintains its schedule for completion of the case. The judgement is expected to be issued within a comparatively short timeframe.

27. In the *Vlastimir Đorđević* case, the trial commenced on 27 January 2009. Initially, the Prosecution proposed to call a total of 132 witnesses and to present 4,489 exhibits; however, following orders made by the Pre-Trial Judge, the Prosecution withdrew a total of 17 witnesses. Pursuant to orders made by the Trial Chamber, the evidence-in-chief of some 60 witnesses will be received in writing, and the evidence of a further 30 witnesses will be received in the form of written statements, with these witnesses being required to appear in court only for cross-examination. As at 24 April 2009, 47 witnesses had completed their evidence before the Chamber. It is estimated that the trial will last 16 months, steady progress is being made, and the estimate is currently accurate.

28. It should be noted that, if Đorđević had been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Milutinović et al.* case, but now must be tried alone.

C. Contempt proceedings

29. The Tribunal, like any other court, possesses the inherent power to punish individuals for acts of contempt. To date, 43 contempt cases have been brought before the Tribunal. It is essential that individuals who knowingly and wilfully interfere with the Tribunal's administration of justice are called to account for their behaviour, particularly when it involves disclosing confidential witness information or intimidating or bribing witnesses. It is regrettable that such behaviour has led to the need to prosecute several contempt cases during the reporting period: 11 cases are currently ongoing, and the Tribunal is diligently discharging its duty to pursue these matters, in order to safeguard the integrity of the proceedings and the administration of justice and the rule of law.

30. Further progress was made in two contempt cases arising from the *Haradinaj et al.* trial. Trial in the case of *Prosecutor v. Astrit Haraqija and Bajrush Morina* was conducted on 8-11 September 2008, and the Trial Judgement was delivered on 17 December 2008. Both accused were found guilty of contempt of the Tribunal, one being sentenced to five months' confinement, and the other being sentenced to

three months' confinement. All the parties have appealed, and the case is now under consideration by the Appeals Chamber.[11] The case of *Prosecutor v. Shefqet Kabashi* is still pending his arrest and transfer to The Hague.

31. The contempt case against Dragan Jokić is currently on appeal. The contempt proceedings were initiated following Jokić's refusal to testify in the case of *Prosecutor v. Popović et al.* The Trial Chamber issued an order in lieu of indictment on 1 November 2007. On 27 March 2009, the Trial Chamber found Jokić guilty and sentenced him to four months of imprisonment.[12]

32. On 21 January 2009, the Trial Chamber issued an order in lieu of indictment charging Vojislav Šešelj with contempt for having disclosed, in a book authored by him, confidential information of witnesses in the case against him, including excerpts of one of the witnesses' written statements. An *amicus curiae* Prosecutor was assigned by the Acting Registrar on 11 February 2009, and Šešelj's initial appearance was held on 6 March 2009. He has pled not guilty, and the trial is currently under way.

33. In the contempt case of *Prosecutor v. Florence Hartmann*, which arose from the *Slobodan Milošević* trial, an order in lieu of indictment was filed on 27 August 2008 and amended on 27 October 2008. At a further appearance on 14 November 2008, the Presiding Judge entered a plea of not guilty on behalf of the accused to the two counts of contempt. On the eve of trial, Hartmann filed a motion for disqualification of two of the Judges assigned to the bench. On 25 March 2009, that motion was granted and new Judges assigned.

34. In addition to the contempt matters discussed above, the Tribunal is seized of some other confidential contempt matters in which no hearings have taken place thus far.

35. The influx of contempt proceedings, particularly those that relate to ongoing trials, has had a significant impact on the expeditious completion of those trials. Contempt cases consume time additional to that used by the trial to which they relate when the Trial Chamber concerned must try the case itself. There have been some such instances in which delays have been caused when a Chamber has found it necessary to suspend a trial temporarily for reasons relating to the contempt charges. Furthermore, contempt proceedings place an additional burden on the already heavy workload of the permanent and *ad litem* Judges, who must conduct these contempt proceedings in addition to their primary cases. As a measure to minimize their impact on the trial proceedings, some Chambers have attempted to deal with contempt allegations as part of and during their trial proceeding. Where the contempt involves alleged conduct on the part of the accused, some Chambers have considered that their impartiality in trying the case against the accused would be impugned; in these cases, the contempt trial has been transferred to other Chambers so that they can be tried and completed straightway. The transfer of these cases to other Chambers, however, has placed an additional strain on the resources of the Tribunal.

36. In April, we established a working group to assess the procedural and substantive aspects of contempt proceedings and to recommend methods of

[11] Enclosure I.

[12] Enclosure I.

expediting their adjudication. The first report of the working group will be submitted at the end of May, and it is hoped that any recommendations can be utilized to expedite the pending contempt cases.

D. Appeal proceedings

37. Two appeals Judgements were issued during the reporting period — in the *Krajišnik* case (17 March 2009) and the *Mrkšić and Sljivančanin* case (5 May 2009). In addition, one review decision (*Naletilić*), 14 interlocutory appeals, and three other appeals were rendered. There are currently five appeals from Judgement pending before the Appeals Chamber. Of these, it is anticipated that hearings will be held in the *Haradinaj et al.* and *D. Milošević* cases prior to the summer recess, and in both the *Boškoski and Tarčulovski* and *Delić* cases after the recess. Briefing is still under way in the *Milutinović et al.* case, in which appeals are anticipated from the Prosecution and the five accused convicted at trial. Delays were incurred as a result of motions to introduce additional evidence on appeal (brought in both the *Mrkšić and Sljivančanin* case and the *D. Milošević* case), as well as notable complications resulting from the fact that the appellant in the *Krajišnik* case decided to exercise his right to self-representation, with legal counsel on discrete legal issues only.

38. It should, however, be noted that the Trial Chambers of the International Criminal Tribunal for Rwanda have recently denied the referral of four cases at the pre-trial stage to domestic jurisdictions (*Gatete*, *Hategekimana*, *Kanyarukiga*, and *Munyakazi*), along with the case of one accused who is at large (*F. Kayishema*). Three of these decisions were appealed, and the denials were affirmed by the Appeals Chamber. Five cases therefore, which were thought to be potential candidates for referral, now remain on the docket of the Tribunal for Rwanda. In addition, an earlier case, *Bagaragaza*, had its referral to Norway refused by the Trial and Appeals Chamber due to a lack of capacity on the part of Norway to prosecute international crimes. A subsequent referral to the Netherlands was also revoked due to that Court's lack of jurisdiction over genocide charges. That case is also now back on the docket of the Tribunal for Rwanda. This significant retention of cases at the Tribunal, manifest in the seven cases currently at the pre-trial stage and the large number of accused at large, will seriously extend the work of the Judges of the Appeals Chamber in 2010 and 2011.

39. According to an audit report completed on 29 October 2008, the average duration of trials at the Tribunal for the Former Yugoslavia has been reduced rapidly, with an average decline from 712 days in 2002 to 517 days in 2005. Specifically regarding appeals, the external auditors noted that, even though the average time for the rendering of an appeal decision is still longer than the average time required to render a first instance judgement, appellate decisions are being rendered sooner than the target average time originally envisaged, which was two years after the trial judgement is rendered. The report also noted that the length of time for rendering decisions on interlocutory appeals as well as the number of such appeals has declined in the past five years, demonstrating that important legal precedents have been set into place.

40. In the first Completion Strategy report, submitted to the Security Council in May 2004, the Security Council was advised that a total of eight accused were being

tried in six cases and that, in the nine years following its establishment, the Tribunal had completed or was holding first instance proceedings involving 59 accused in 38 proceedings.[13] There were a total of 33 accused awaiting trial in 17 cases,[14] appeals had been completed in 20 cases involving 28 accused,[15] and 20 fugitives were at large. Today, only five years later, only six accused are in the pre-trial stage,[16] and 21 accused are currently on trial.[17] Proceedings in respect of 117 of the total 161 persons indicted by the Tribunal have been completed. It is only the two indictees — Mladić and Hadžić — who still need to be brought to face justice, and their apprehension relies upon the cooperation of the international community.[18] The achievements of the Tribunal far surpass that of any other international or hybrid court, both in respect of number of persons tried and its contribution to international criminal law, and demonstrate the commitment of the Tribunal to the expeditious completion of its mandate.

III. Retention of Judges and staff

41. The resolution of the pension issue in relation to the permanent Judges has been a milestone in ensuring that well-qualified, professional Judges will be available to steer the Tribunal into its final years.

42. The *ad litem* Judges have continued to make an outstanding contribution to expediting the Tribunal's work. Currently, the Tribunal has 12 *ad litem* Judges following the departure of three *ad litem* Judges who served on the *Milutinović et al.* trial. It is anticipated that the number of *ad litem* Judges will continue to decrease with the delivery of Judgements this year. All *ad litem* Judges are fully engaged in the work of the Tribunal, and have also been engaged in the preparation of new cases for trial. *Ad litem* Judges have been willing to take on pre-trial work in cases other than their primary ones in order to complete the Tribunal's work, and their continued efforts are imperative for the completion of the Tribunal's mandate.

43. As the Tribunal nears the end of its mandate, there has been a marked increase in the departure of many of its uniquely and highly qualified staff, who are understandably leaving the Tribunal for more secure employment with other international courts and institutions. I cannot emphasize enough the need for the assistance of the Security Council and the General Assembly in immediately adopting measures to retain our staff. In that regard, I have written to the Secretary-General and requested that he initiate a United Nations-wide recruitment task force to provide opportunities for downsized Tribunal staff in headquarters duty stations, specialized agencies, and peacekeeping missions, much as what the previous Secretary-General had done for the United Nations Compensation Commission. Inadequate and inexperienced staffing for the Tribunal will slow down the trial and appellate proceedings and will place a much heavier financial burden on the international community in the long run. I therefore urge the Security Council and

[13] S/2004/420, para. 2.
[14] S/2004/420, annex 3.
[15] S/2004/420, annex 4.
[16] Enclosure IV.
[17] Enclosure II.
[18] Enclosure III.

Member States to exercise foresight and to assist us now in devising strategies sufficient to ensure that staff can remain at their posts until they are abolished.

IV. Referral of cases

44. The positive impact on the overall workload of the Tribunal of the referral of cases to national jurisdictions has been substantial. Between 2005 and 2007, eight cases involving thirteen indicted accused were ordered by a special chamber ("Referral Bench") to be referred to the competent authorities of three separate national jurisdictions. As a result of these orders, ten accused were transferred to Bosnia and Herzegovina for trial before the War Crimes Chamber of the State Court, two accused were transferred to the authorities of Croatia for trial before the Zagreb County Court, and one accused was transferred to Serbia for trial before the Belgrade District Court. The remaining indictees awaiting trial before the Tribunal are not in the category of lower or intermediate level accused in terms of the seniority and responsibility criteria set forth in Security Council resolutions 1503 (2003) and 1534 (2004), and thus are ineligible for referral to national jurisdictions.

45. The Prosecution continues to monitor the cases referred to national jurisdictions through the OSCE. Under Rule 11 *bis*, the Prosecution has the authority to request the Referral Bench to both revoke the referral order and formally request deferral of any case in which fair trial proceedings are not being conducted. To date, no such requests have been made by the Prosecutor. Of the thirteen accused transferred to national jurisdictions, four have had their cases fully concluded through the appeals stage and monitoring is thus no longer required. These are the cases against Radovan Stanković, Gojko Janković, Mitar Rašević, and Savo Todović, who received sentences, following appeal, of twenty years, thirty-four years, seven years, and twelve and a half years, respectively. Two other accused, Paško Ljubičić and Dušan Fuštar, plead guilty, and thus their cases are final without the need for an appeal; they received sentences of ten years and nine years, respectively. Likewise, monitoring has concluded for these cases. The cases of five accused are currently on appeal, Željko Mejakić, Momčilo Gruban, Duško Knežević, Rahim Ademi, and Mirko Norac. The trial of one accused, Milorad Trbić, is currently ongoing. The final of the thirteen accused, Vladimir Kovačević, has been deemed unfit to stand trial pending any change in his mental health status.

46. The referral of these cases to national jurisdictions has greatly facilitated the ability of the Tribunal to bring to trial at the earliest possible date less senior leaders indicted by the Tribunal. At the same time, it has strengthened the capacity of national court systems in the former Yugoslavia for adjudication of serious violations of international humanitarian law, both presently and in the years ahead.

V. Outreach and capacity-building

47. The Tribunal continued to conduct a wide range of outreach activities with key stakeholders in the States of the former Yugoslavia. The main focus remained the transfer of knowledge and expertise and strengthening the capacity of national authorities to prosecute war crimes cases, as well as communicating the work of the Tribunal and enhancing media coverage of trials and judgements.

48. Outreach officers on the ground in Bosnia and Herzegovina, Croatia, and Serbia continue to participate in a variety of public events, communicating directly with the most affected communities, legal professionals, public officials, and civil society leaders in order to counter myths and misperceptions about the Tribunal and its proceedings and to disseminate facts about the Tribunal's achievements and its contribution to the recovery of the former Yugoslavia.

49. In cooperation with outside agencies and organizations, the regional Outreach offices have actively supported various training programmes, including visits to the Tribunal and seminars conducted on the ground. The Outreach Programme facilitated numerous visits to the Tribunal from Bosnia and Herzegovina and Serbia during the reporting period, involving many judges and prosecutors. During the reporting period, Outreach from the Tribunal for the Former Yugoslavia was instrumental in the development of a new public information and outreach strategy of the War Crimes Chamber of the Court of Bosnia and Herzegovina, which is aimed at involving the public in the effort to deal with war crimes on various levels. The launch of the Tribunal's new content-enhanced website in December 2008 was a significant development. It provides many new tools and access to databases of great value to legal practitioners in the region.

50. The Tribunal continues to promote leadership and support for the rule of law among key youth audiences in the former Yugoslavia through educational programmes and exchanges organized by the Outreach Programme. A new initiative in this respect is an internship programme developed jointly with a civil society organization based in Serbia. The second group of Serbian students selected and sponsored through this project has started interning at the Tribunal; and, immediately afterwards, they will proceed to conduct internships in national judicial institutions and non-governmental organizations, thereby benefiting the local structures that are essential for a lasting peace and rule of law in the region.

VI. Cooperation of States

51. I am pleased to note a clear demonstration of support from the international community in the arrest and transfer of two of the high-level remaining fugitives, Karadžić and Župljanin, but I am equally disappointed that Mladić and Hadžić continue to remain at large. The Tribunal must not close its doors until these fugitives are arrested and tried. I once again call on all States to cooperate in full adherence with their obligation to do so under article 29 of the Statute of the Tribunal, and I urge the Security Council to make clear that the trial of these fugitives by the international community does not hinge upon the Tribunal's proposed Completion Strategy dates.

VII. Legacy of the Tribunal and Residual Mechanism

52. The Tribunal continues to respond diligently to requests for information from the Office of the Legal Counsel with respect to the development of a residual mechanism as it draws closer to the completion of its mandate. In this regard, the Tribunal provided its staffing estimates of a residual mechanism depending on the level of judicial activity expected and has responded to many requests for additional information about the functioning of the Tribunal. The Tribunal understands that the

only current consensus among members of the Security Council working group on the residual mechanism is that it be small, cost-effective, and efficient. While the Tribunal accepts that not all Council Members envisage the Tribunal retaining all of the residual functions, it urges the Security Council to ensure that the integrity of the work of the Tribunal is not compromised by the transfer of those functions to bodies lacking the expertise and funds to properly deal with them.

53. The broader question of the legacy of the Tribunal's work for international as well as domestic courts remained one of our priorities during the reporting period. With the assistance of the United Nations Interregional Crime and Justice Research Institute, we have elaborated a compilation of our developed practices, which will be launched in The Hague at a Diplomatic Briefing held on 28 May. This project will also be set into motion at meetings in New York on 9 June 2009 and then in Sarajevo on 15 June 2009. Another project, carried out in partnership with the OSCE's Office for Democratic Institutions and Human Rights, made an assessment of the capacity of the judiciaries of the former Yugoslavia to conduct war crimes cases, identified outstanding needs, and assessed previous capacity-building efforts in order to identify best practices. The project's interim report was launched in Sarajevo in mid-May, with a final report due in September. In parallel, the Tribunal has been working to design capacity-building and technical assistance programmes to meet the identified needs of the local justice systems responsible for dealing with war crimes cases. The Tribunal hopes to secure significant funding from the European Commission to implement this programme together with its partner organizations.

54. The Tribunal places great emphasis on capacity-building projects, which it considers not only critical to the implementation of its mandate to promote peace and reconciliation, but also as a measure to maximize the financial investment made by the international community in the Tribunal. In this respect, the Tribunal notes that, while the Security Council in resolutions 1503 (2003) and 1534 (2004) called upon the international community to assist national jurisdictions, as part of the Completion Strategy, in improving their capacity to prosecute cases transferred from the Tribunal for the Former Yugoslavia and the Tribunal for Rwanda and encouraged the Tribunals to develop and improve their outreach programmes, no funds have been allocated from the regular budget to carry out capacity-building initiatives or other outreach activities in the region. For such a critical task, the Tribunal relies solely on voluntary funding. The Tribunal acknowledges the generous financial support of the European Commission to its capacity-building and outreach activities, and applauds the European Commission's commitment to the entrenchment of the rule of law in the States of the former Yugoslavia and its recognition of the fundamental importance of ensuring that the Tribunal's expertise is not lost, but transferred to those most in need of it.

VIII. Conclusion

55. During the reporting period, the International Tribunal has demonstrated a steadfast commitment to concluding its proceedings as expeditiously as possible, while at the same time in full compliance with due process standards. The slips in estimated completion dates are mainly attributable to factors that are not within the immediate control of the Tribunal, and others can be attributed to overly ambitious scheduling in response to Security Council expectations. Despite that increasing

pressure, the Tribunal's Judges and staff remain highly motivated, enthusiastic, and fully committed to improving the expeditiousness of the Tribunal's proceedings through the identification and implementation of new measures, so as to demonstrate to the Security Council and the international community that their continued support is well warranted. However, I must reiterate to the Security Council that such commitment must be matched by the Council's support for measures to retain the Tribunal's most qualified staff. I thus urge the Security Council to ensure that appropriate retention schemes are adopted as a matter of urgency. I must also restate that domestic judicial institutions in the former Yugoslavia are crucial partners in the development of a peaceful society based upon the rule of law, to whom assistance and support must continue to be granted so as to guarantee the Tribunal's long-lasting legacy and continued positive effect upon the communities of the former Yugoslavia, even after the close of the Tribunal.

56. The International Tribunal will be remembered as the first and most successful international criminal institution established thus far. In order to ensure that its achievements endure, I call upon the Security Council to maintain its vital support to the International Tribunal, to take all possible measures to effect the immediate arrest of the last two fugitives so that its remaining cases can be completed expeditiously, to ensure the proper handling of the necessary residual functions by an appropriate body, and to provide assistance to judicial institutions in the former Yugoslavia to enable them to continue the work started by the International Tribunal and the Security Council.

Enclosure I

1. Persons Convicted or Acquitted after Trial between 15 November 2008 – 15 May 2009 (6) (5 convicted and 1 acquitted)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1.	Dragoljub Ojdanić	Chief of Staff, VJ	26-Apr-02	26 February 2009 15 years of imprisonment
2.	Nikola Šainović	Deputy Prime Minister, FRY	3-May-02	26 February 2009 22 years of imprisonment
3.	Milan Milutinović	President, Republic of Serbia	27-Jan-03	26 February 2009 acquitted of all charges
4.	Vladimir Lazarević	Commander, Priština Corps, VJ	7-Feb-05	26 February 2009 15 years of imprisonment
5.	Sreten Lukić	Head, Serbian Ministry of Internal Affairs Staff for Kosovo	6-Apr-05	26 February 2009 22 years of imprisonment
6.	Nebojša Pavković	Commander, 3rd Army, VJ	25-Apr-05	26 February 2009 22 years of imprisonment

Legend
VJ: Army of Yugoslavia
FRY: Federal Republic of Yugoslavia

2. Persons Pleading Guilty between 15 November 2008 – 15 May 2009 (0)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
No Guilty Pleas				

3. Persons Convicted of Contempt between 15 November 2008 – 15 May 2009 (3)			
Case	**Name**	**Initial Appearance**	**Judgement**
1.	Astrit Haraqija	29 April 2008	17 December 2008 Sentenced to five (5) months of imprisonment
2.	Bajrush Morina	29 April 2008	17 December 2008 Sentenced to three (3) months of imprisonment
3.	Dragan Jokić	19 November 2007	27 March 2009 Sentenced to four (4) months of imprisonment

Enclosure II

Trials in Progress between 15 November 2008 – 15 May 2009 (21 accused - 7 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1.	Jadranko Prlić	President, "Herceg-Bosna"	6 Apr- 04	"Herceg-Bosna" Trial Commenced on 26 April 2006
	Bruno Stojić	Head Department of Defence, "Herceg-Bosna"		
	Slobodan Praljak	Assistant Minister Defence, "Herceg-Bosna"		
	Milivoj Petković	Commander, HVO		
	Valentin Ćorić	Chief of Military Police Administration, HVO		
	Berislav Pušić	Military Police Commanding Officer, HVO		
2.	Ljubiša Beara	Colonel, Chief of Security, VRS	12-Oct-04	"Srebrenica" Trial Commenced on 14 July 2006
	Drago Nikolić	Chief of Security, Drina Corps, VRS	23-Mar-05	
	Ljubomir Borovčanin	Deputy Commander, Ministry of Interior Special Police Brigade, RS	7-Apr-05	
	Vujadin Popović	Lt. Colonel, Assist. Commander, Drina Corps, VRS	18-Apr-05	
	Vinko Pandurević	Commander, Zvornik Brigade, VRS	31-Mar-05	
	Milan Gvero	Assistant Commander, VRS	2-Mar-05	
	Radivoje Miletić	Chief of Operations, Deputy Chief of Staff, VRS	2-Mar-05	
3.	Vojislav Šešelj	President, SRS	26-Feb-03	Trial Commenced on 7 November 2007
4.	Ante Gotovina	Commander, Split Military District, HV	12-Dec-05	Trial Commenced on 11 March 2008
	Ivan Čermak	Assistant Minister Defence, Commander of Military Police, Croatia	12-Mar-04	
	Mladen Markač	Special Police Commander, Croatia	12-Mar-04	
5.	Momčilo Perišić	Chief of General Staff, VJ	9-Mar-05	Trial Commenced on 2 October 2008
6.	Sredoje Lukić	Members, Serb paramilitary unit, BiH (alleged)	20-Sept-05	Trial Commenced on 9 July 2008
	Milan Lukić		24-Feb-06	

7.	Vlastimir Đorđević	Assistant Minister of the Serbian Ministry of Internal Affairs (MUP), Chief of the Public Security Department of the MUP	19-Jun-07	Trial Commenced on 27 January 2009

Legend:

Herceg-Bosna:	*Croatian Republic of Herceg-Bosna*
HVO:	*Croatian Defence Council*
RS:	*Republika Srpska*
VRS:	*Bosnian Serb Army*
VJ:	*Army of Yugoslavia*
BiH:	*Bosnia and Herzegovina*
SRS:	*Serbian Radical Party*
HV:	*Croatian Army*

Enclosure III

1. Arrivals at the Tribunal between 15 November 2008 – 15 May 2009 (0)					
	Name	**Former Title**	**Place of crime**	**Arrival Date**	**Initial Appearance**
No new arrivals					

2. Remaining Fugitives between 15 November 2008 – 15 May 2009 (2)				
	Name	**Former Title**	**Place of Crime**	**Date indictment**
1.	Ratko Mladić	Commander, Main Staff, VRS	BiH	25 July 1995
2.	Goran Hadžić	President, "SAO SBWS"	Croatia	28 May 2004
Total Remaining Indictees: 2				

Legend:
VRS: *Bosnian Serb Army*
SAO SBWS: *Serbian Autonomous District, Slavonia Baranja and Western Srem*

Enclosure IV

Accused Awaiting Trial for the period 15 November 2008 – 15 May 2009 (6 accused, 4 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1.	Zdravko Tolimir	Assistant Commander for Intelligence and Security of the Bosnian Serb Army	04-Jun-07
2.	Mićo Stanišić	Minister, Internal Affairs, RS	17-Mar-05
	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	21-Jun- 2008
3.	Radovan Karadžić	President, RS	31-Jul- 2008
4.	Franko Simatović	Commander, Special Operations Unit, State Security Services ("DB"), Republic of Serbia	2-Jun-03
	Jovica Stanišić	Head, State Security Services ("DB"), Republic of Serbia	12-Jun-03

Legend:
RS: *Republika Srpska*
DB: *State Security Services*

Enclosure V

APPEALS COMPLETED FROM 15 NOVEMBER 2008 [1]
(with date of Filing and Decision) Updated to 7 May 2009

INTERLOCUTORY		FROM JUDGEMENT	
ICTY		ICTY	
1. Prlic et alIT-04-74-AR73.12	11/11/08-05/12/08	1. Krajisnik IT-00-39-A	25/10/06-17/03/09
2. Prlic IT-04-74-Ar65.12- *Conf*	10/12/08-16/12/08	2. Mrksic IT-95-13/1-A	29/10/07-05/05/09
3. Prlic IT-04-74-Ar65.11	09/12/08-17/12/08		
4. Prlic IT-04-74-Ar65.13- *Conf*	11/12/08-18/12/08		
5. Prlic et al IT-04-74-Ar73.13	13/11/08-12/01/08	ICTR	
6. Gotovina et al IT-06-90-Ar73.3	19/11/08-26/01/09	1. Karera ICTR-01-74-A	12/10/06-03/02/09
7. Tolimir IT-05-88/2-AR72.1	29/12/01-25/02/09		
8. Prlic et al IT-04-74-AR73.14	29/12/01-26/02/09	OTHER	
9. Perisic IT-04-81-AR108bis 2 – *Conf*	26/11/08-27/02/09	ICTY	
10. Tolimir IT-05-88/2-AR72.2	22/01/09-12/03/09	1. Gotovina IT-06-90-AR73.3	30/03/09-27/03/09
11. Perisic IT-04-81-ar108bis.3– *Conf*	24/02/09-30/03/09	2. Seselj IT-03-67-T	11/12/08-09/04/09
12. Karadzic IT-95-5/18-AR73.1	19/01/09-06/04/09	3. Gotovina IT-06-90-Ar73.4	18/02/09-07/05/09
13. Prlic et al IT-04-74-AR73.15	16/04/09-20/04/09		
14. Karadzic IT-95-5/18-AR73.2	05/03/09-07/05/09		
		ICTR	
ICTR		1. Ntagerura ICTR-99-46-Ar28	19/09/08-18/11/08
		2. Muvunyi - ICTR-96-13-R	28/01/09-27/02/09
1. Karemera *et al* - ICTR-98-44AR91	24/11/08-23/01/09	3. Ngeze ICTR-99-52-R	25/11/09-12/03/09
2. Karemera *et al* - ICTR-98-44AR73.14	30/10/08-30/01/09	4. Rutaganda ICTR-01-71-R75	14/04/09-22/04/09
3. Muvunyi ICTR-2000-55A-PT	05/02/09-24/03/09	5. Muvunyi ICTR-96-3-R	05/03/09-23/04/09
4. Nshogoza ICTR-07-91-Ar	02/03/09-25/03/09		
5. Ngirumpatse ICTR-98-44-AR65	30/03/09-07/04/09		
6. Karemera et al ICTR-98-44-AR73.15	13/02/09-05/05/09	REFERRAL	
		ICTR	
		1. Hategikimana ICTR-00-55B-R11bis	30/06/08-04/12/08
		REVIEW	
		ICTY	
		1. Naletilic IT-98-34-R	01/07/08-19/03/09
		ICTR	
		1. Niyitegeka ICTR-96-14-R	03/11/08-15/01/09
		CONTEMPT	

[1] **Total number of Appeals Completed from 15 November 2008 = 34**
Interlocutory Appeals = 20 Contempt = 0 Referral = 1
Appeals from Judgement = 3 Review = 2 Other = 8

Enclosure VI

APPEALS pending as of 15 MAY 2009 [3]
(with date of filing) Updated to 7 May 2009

INTERLOCUTORY		FROM JUDGEMENT	
ICTY		ICTY	
1. Prlic et al IT-04-74-A/65.14	11/03/09	1. D.Milosevic IT-98-29/1-A	31/12/07
		2. Haradinaj et al, IT-04-84-A	01/05/08
		3. Boskoski/Tarculovski IT-04-82-A	22/07/08
		4. Delic IT-04-83-A	14/10/08
ICTR		5. Mihalinovic IT-05-87-A	09/03/09
1. Karemera et al ICTR-98-44-Ar73.16	02/03/09		
2. Karemera et al ICTR-98-44-Ar73.17	04/03/09	ICTR	
3. Nshogoza ICTR-07-91-A	25/03/09	1. Ndahimana ICTR-2001-63-A	20/10/08
4. Ngirabatware - ICTR-99-54-A	21/04/09	2. Zigiranyirazo ICTR-01-73-A	29/12/08
		3. Bagosora - ICTR-98-41A	29/12/08
		4. Bikindi ICTR-01-72-A	29/12/08
		5. Rukundo ICTR-01-70-A	11/03/09
		OTHER	
		ICTY	
		ICTR	
		1. Ndindiliyimana ICTR-01-71-R	12/12/08
		2. Rutaganda ICTR-96-3-R	09/03/09
		3. Muvunyi ICTR-00-55A-Ar	07/04/09
		4. Munyana ICTR-96-3-R	01/05/09
		REFERRAL	
		REVIEW	
		ICTR	
		1. Barayagwiza ICTR-99-52A-R	25/11/08
		CONTEMPT	
		ICTY	
		1. IT-04-84-R77.4-A, Haraqija & Morina	02/01/09
		2. IT-05-88-R77.1-A Jokic - Conf	14/04/09

[3] **Total number of Appeals pending = 22**
Interlocutory Appeals = 5 Contempt = 2 Referral = 0
Appeals from Judgement = 10 Review = 1 Other = 4

Enclosure VII

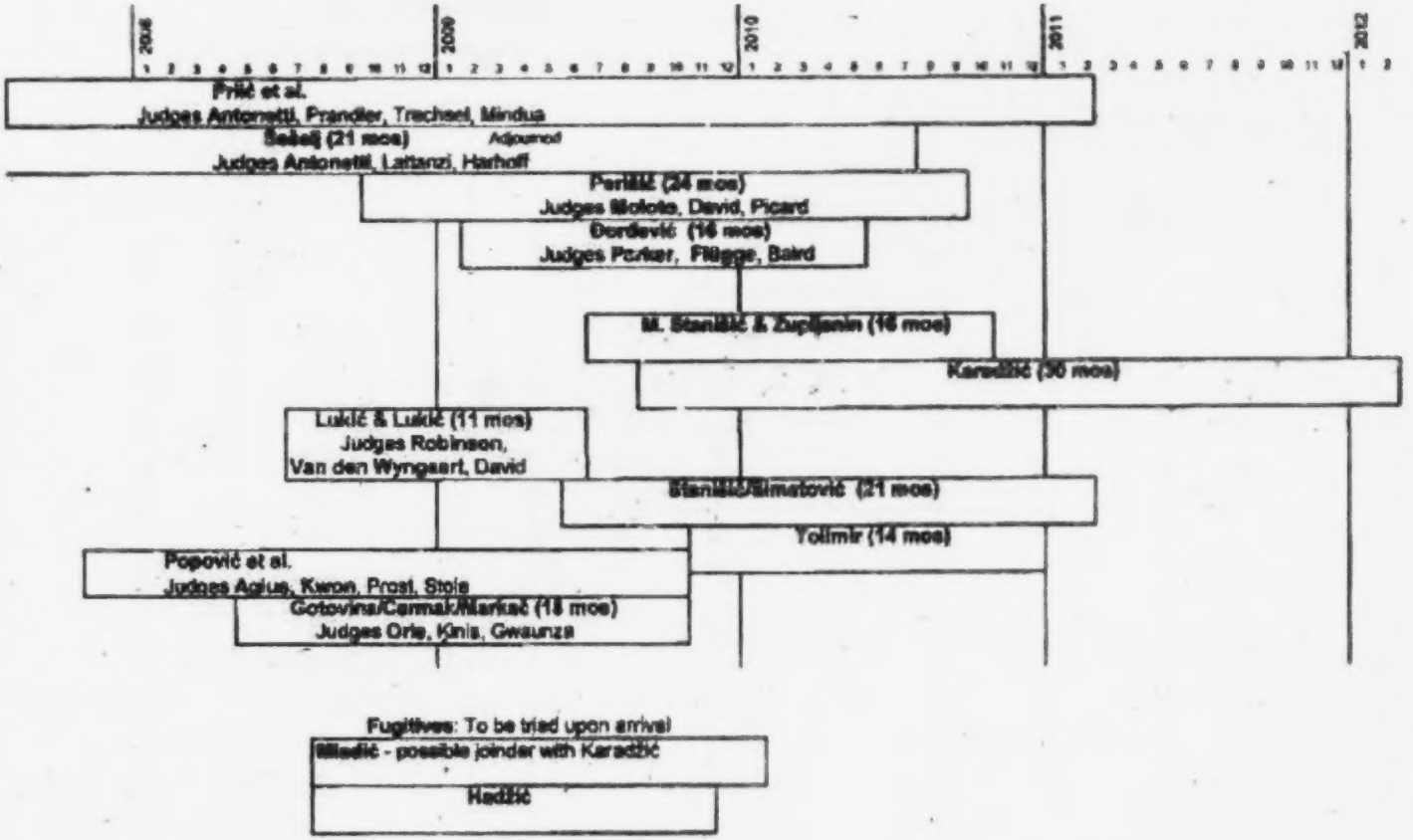
APPEALS MOTIONS disposed of from 15 NOVEMBER 2008 To 7 May 2009 (with case clarification)

ICTR		ICTY	
17/11	*Karemera et al. (Ngirumpatse)*	17/11	*Boskoski & Tarculovski*
18/11	*Nchamihigo*	19/11	*Boskoski & Tarculovski*
18/11	*Karemera et al. (Ngirumpatse)*	25/11	*Boskoski & Tarculovski*
27/11	*Karemera et al. (Nzirorera)*	25/11	*Mrkšić and Ljivančanin*
03/12	*Ndindabahizi*	28/11	*Boskoski & Tarculovski*
04/12	*Karera*	01/12	*(confidential and ex parte) – Mrkšić & Šljivančanin*
16/12	*Barayagwiza*	01/12	*(confidential and ex parte) – Mrkšić & Šljivančanin*
17/12	*Ndindabahizi*	01/12	*(confidential and ex parte) -Mrkšić & Šljivančanin*
17/12	*Rutaganda*	04/12	*Mrkšić & Šljivančanin*
13/01	*Bikindi*	11/12	*Delić*
13/01	*Zigiranyirazo*	12/12	*(confidential and ex parte) - Mrkšić & Šljivančanin*
14/01	*Bagosora*	12/12	*Mrkšić & Šljivančanin*
14/01	*Kabiligi*	12/12	*(confidential and ex parte) - Mrkšić & Šljivančanin*
15/01	*Niyitegeka*	12/12	*(confidential) – Boskoski & Tarculovski*
15/01	*Nzengiyumva*	19/01	*Mrkšić & Šljivančanin*
15/01	*Nzengiyumva*	20/01	*(confidential and ex parte) - Mrkšić & Šljivančanin*
15/01	*Kabiligi*	20/01	*D Milosevic*
15/01	*Bagosora*	20/01	*Prlić*
16/01	*Bagosora et al*	23/01	*Prlić*
16/01	*Bagosora et al*	26/01	*Haraqija & Morina*
19/01	*Bagosora et al*	27/01	*Karadzic*
22/01	*Rutaganda*	29/01	*(confidential) - Perisic*
22/01	*Ndindabahizi*	09/02	*Mrkšić*
28/01	*Barayagwiza*	09/02	*Mrkšić*
28/01	*Zigiranyirazo*	09/02	*Haraqija & Morina*
28/01	*Bagosora et al*	12/02	*Harigija & Morina*
06/02	*Musema*	13/02	*Confidential – Mrkšić and Ljivančanin*
09/02	*Muvunyi*	13/02	*Mrkšić and Ljivančanin .*
16/02	*Rutaganda*	16/02	*Confidential - Mrkšić and Ljivančanin*
18/02	*Karemera et al*	19/02	*Boskoski & Tarculovski*
19/02	*Ndindabahizi*	03/03	*D Milosevic*
27/02	*Ndindabahizi*	03/03	*Haradinaj*
02/03	*Bagosora et al.*	11/03	*Boskoski & Tarculovski*
06/03	*Nzhogoza*	19/03	*Haraqija & Morina*
06/03	*Karemera*	19/03	*(confidential) – Perisic*
10/03	*Zigiranyirazo*	19/03	*Milutinovic*
10/03	*Karemera*	23/03	*Milutinovic et al*
11/03	*Musema*	26/03	*D Milosevic*
12/03	(confidential) - *Niyitegeka*	26/03	*Boskoski & Tarculovski*
17/03	*Rukundo*	27/03	*Gotovina et al*
18/03	*Zigiranyirazo*	02/04	*(confidential) – Milutinovic et al*
24/03	*Muvunyi*	08/04	*Haraqija*
24/03	*Karemera et al*	08/04	*Gotovina et al*
25/03	*Nzhogoza*	09/04	*D Milosevic*
25/03	*Rukundo*	09/04	*Mrkšić and Ljivančanin*
30/03	*Nchamihigo*	09/04	*Mrkšić and Ljivančanin*
03/04	*Rukundo*	16/04	*Boskoski & Tarculovski*
03/04	*Bagosora*	16/04	*Boskoski & Tarculovski*
06/04	*Karemera*		
09/04	*Rutaganda*		
16/04	*Bagosora et al*		
21/04	*Nzhogoza*		
22/04	*Muvunyi*		
22/04	*Rutaganda*		

24/04	*Karemera et al.*	22/04	*D Milosevic (confidential)*
24/04	*Karemera et al.*	27/04	*D Milosevic*
24/04	*Rutaganda*	27/04	*Haradinaj et al (confidential)*
27/04	*Ngirabatware*		
27/04	*Barayagwiza*		
27/04	*Ndindabahizi*		
27/04	*Nzirorera*		
29/04	*Nchamihigo*		
29/04	*Nchamihigo*		
05/05	*Musema*		
05/05	*Zigiranyirazo*		
06/05	*Rukundo*		
06/05	*Bikindi*		
06/05	*Nchamihigo*		

Enclosure VIII

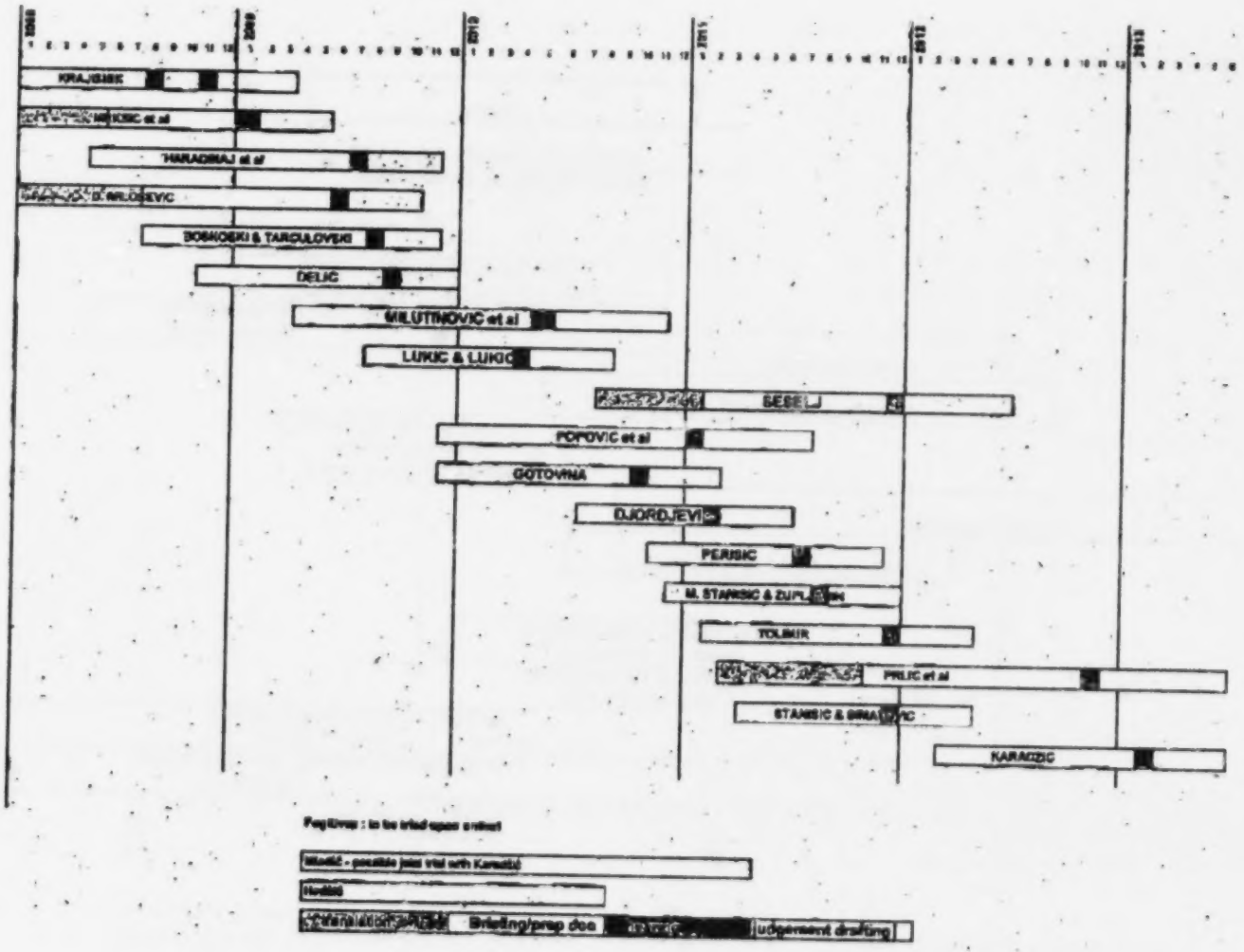
International Tribunal for the Former Yugoslavia trial schedule (working document)
as of 6 May 2009



Enclosure IX

International Tribunal for the Former Yugoslavia appeals schedule (working document)

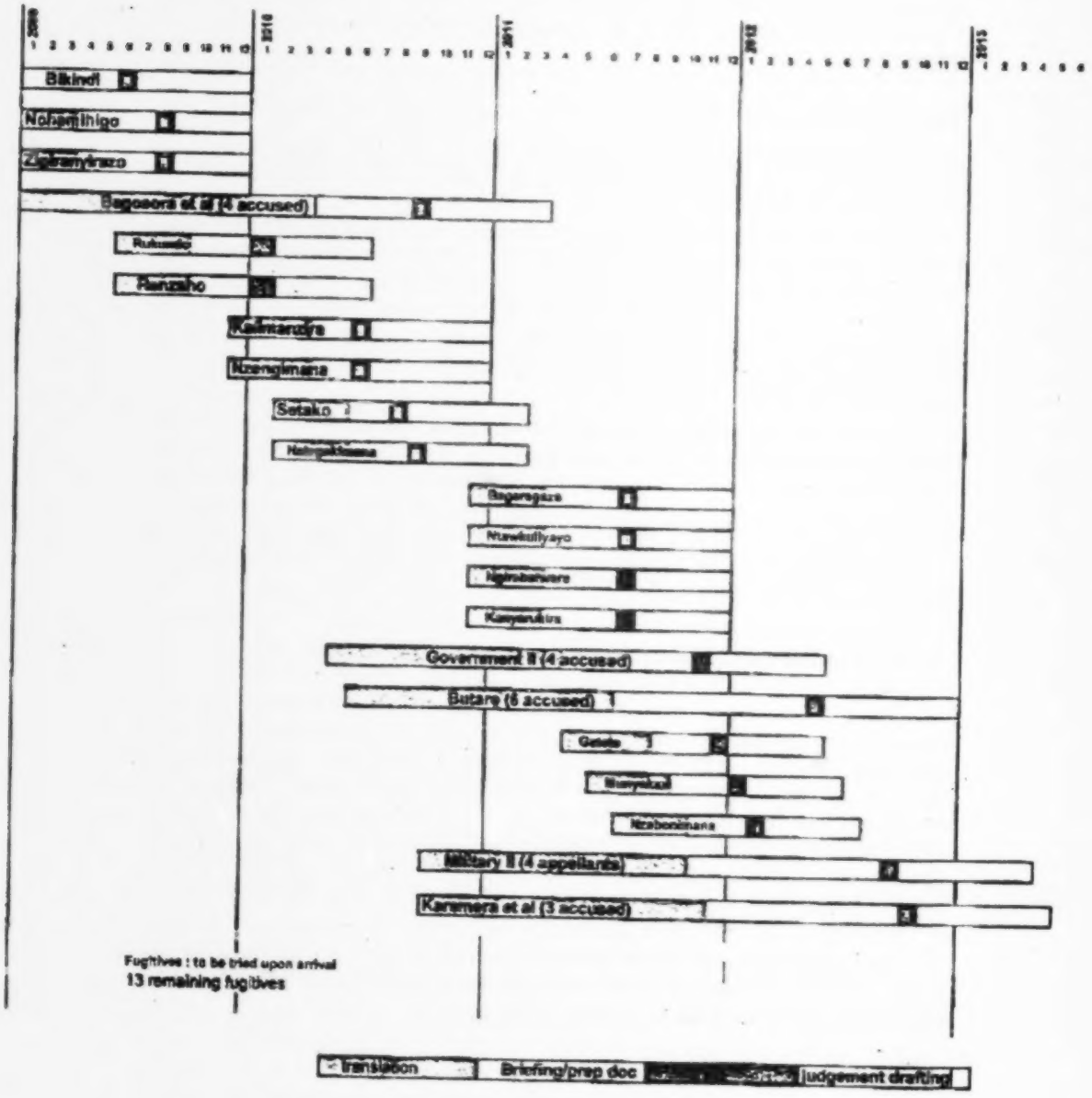
based on 6 May 2009 trial schedule



Enclosure X

International Criminal Tribunal for Rwanda appeals schedule (working document)

3 March 2009



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Annex II

[Original: English and French]

Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)

Introduction

1. This is the eleventh report submitted by the Prosecutor pursuant to Security Council resolution 1534 (2004) of 26 March 2004.

2. During the last six months, important progress in completing the seven cases currently in trial has been made. In addition, preparation of the remaining four cases in pre-trial is well under way. The Office of the Prosecutor remains committed to prosecuting the two remaining fugitives, Ratko Mladić and Goran Hadžić, before the International Tribunal. With the Karadžić case being readied for trial, arresting Ratko Mladić (a potential co-accused) as soon as possible is a priority so they can be tried together for common crimes.

3. During this reporting period, the Office of the Prosecutor focused on the following key priorities: (1) completing remaining trials and appeals; (2) securing international cooperation for the provision of evidence and for the arrest of the fugitives; (3) transferring cases and investigative material to national authorities and assisting the transition back to domestic jurisdictions; and (4) managing resources in a way that prepares for the ultimate downsizing of the Office of the Prosecutor as trials and appeals are completed.

Completion of trial and appeals proceedings

4. The Prosecutor is strongly committed to completing the remaining trials and appeals. Over the last six months, progress towards the completion of the trial programme has been significant. Of the 21 accused in seven trials being prosecuted, one is at the final argument stage (*Lukić and Lukić*), one will conclude with final arguments soon (*Popović et al.*), two are in the defence stage (*Prlić et al.* and *Gotovina et al.*) and three are in varying phases of the prosecution case (*Šešelj*, *Đorđević* and *Perišić*). Only four cases (six accused) remain in pre-trial stages: *Karadžić*, *Stanišić and Župljanin*, *Stanišić and Simatović* and *Tolimir*. All cases involve senior political and military figures.

5. The complexity and size of the cases presents formidable challenges for the Prosecution. The Prosecution's trial and appeals teams work at full capacity to ensure efficient and expeditious progress on every case.

Trials

6. In this reporting period, an important achievement was the delivery of the judgement in the *Milutinović et al.* case on 26 February 2009. Five former high-ranking Serbian political, military and police officials were convicted for the forced expulsion of over 700,000 Kosovo Albanians over a three-month period in 1999. A

sixth was acquitted. This case is now in the appeals phase. The Prosecution has demonstrated its ability to prosecute multi-accused leadership cases effectively through jointly trying accused involved in the same criminal transaction.

7. Other important trial-related events during the reporting period were:

- The second multi-accused leadership case, *Popović et al.*, and the case of *Lukić and Lukić* are at the final argument stage;
- The conclusion of the prosecution case in *Gotovina et al.* on 5 March 2009;
- The Prosecution cases in *Đorđević* and *Perišić* are well-advanced.

8. Meeting the Tribunal's overall completion strategy dates has been hampered by unpredictable events. A major delay occurred in *Šešelj* near the end of the prosecution case from an adjournment caused by difficulties in securing the remaining witnesses' evidence. Considerable uncertainty exists about a continuation date. The projected completion date for the *Đorđević* case has been revised to reflect the progress made so far and it is now expected to end in early 2010 rather than in late 2009.

9. Planning and time management is proving more difficult during the defence case. *Lukić and Lukić* was delayed in its final stages by the need to investigate witnesses interference allegations and to answer late challenges to evidence presented earlier. Also, the *Prlić et al.* defence case has proceeded more slowly than projected. *Prlić et al.* is now in its fourth year and no judgement can be expected until 2011.

10. Both *Stanišić and Simatović*, and *Stanišić and Župljanin* are expected to start before the summer recess. The opportunity to try the *Mladić* case jointly with the *Karadžić* case is fast disappearing. A stand-alone trial of Ratko Mladić is estimated to last between 18 months to two years. The latest Chamber's trial schedule estimates that the majority of the remaining trial work will be finished at the end of 2010, with the final cases, with the exception of *Karadžić* case, not finishing until early or mid-2011. Further details of the progress made in the individual cases is set out below.

11. *Popović et al.* charges seven high ranking members of the Bosnian Serb Army (VRS) and the Ministry of Interior (MUP) with genocide and persecution of Bosnian Muslims in Srebrenica and Žepa in 1995. The trial began in August 2006. By February 2008, when the prosecution case closed, it had presented 150 witnesses, 36 witness statements and several thousand exhibits. The defence case started on 2 June 2008 and the last defence witness testified on 12 March 2009. The defence teams presented 95 witnesses *viva voce*, 29 witness statements and hundreds of exhibits. Closing arguments will be completed by 1 August 2009. The Trial Chamber placed no restrictions on hours or numbers of witnesses and the trial had no major legal or procedural delays. The judgement may be rendered before the end of 2009.

12. In the other multi-accused leadership case at trial, *Prlić et al.*, six high ranking members of the Croatian Republic of Herceg-Bosna and the Croatian Defence Council are charged with persecution of Bosnian Muslims and Serbs in south-western Bosnia and Herzegovina in 1993-1994. The trial started in April 2006 (about the same time as the *Milutinović et al.* case). The prosecution case closed in January 2008 after calling 145 witnesses, presenting 101 witness statements and tendering over 4,000 exhibits. The defence cases started on 5 May 2008. Two

accused, Jadranko Prlić and Bruno Stojić, have completed their defence cases after calling 19 witnesses each and tendering more than 2,000 exhibits. A third accused, Slobodan Praljak, began his defence case at the beginning of May 2009. Based on the Chamber's time allotment to the remaining defence teams, the present forecast is that closing arguments will not be presented until late 2010.

13. As projected, the prosecution case in *Gotovina et al.* closed in March 2009 and the defence case is expected to start at the end of May 2009. The case charges Ante Gotovina, General in the Croatian Army, Ivan Čermak, former Commander of the Knin Garrison, and Mladen Markač, former Commander of the Special Police of the Croatian Ministry of the Interior and Assistant Minister of Justice, with the crimes committed during Operation Storm, a Croatian military operation launched in 1995. The prosecution case presented 78 witnesses, 104 written statements and more than 2,500 exhibits in 175 days.

14. Vojislav Šešelj, the President of the Serbian Radical Party, represents himself on 14 counts of war crimes and crimes against humanity spanning three countries. The trial has been beset by delays. On 11 February 2009, the Chamber adjourned the trial until further notice to ensure the integrity of the trial proceedings. It is unclear when the difficulties which caused the adjournment will be resolved and the trial can be resumed. The Prosecution has 11 witnesses remaining to be called in its case. In the interim, the Office of the Prosecutor has redeployed most trial team members temporarily to other trial teams or tasks.

15. Vlastimir Đorđević, the former Assistant Minister of the Serbian Ministry of Internal Affairs (MUP) and Chief of the Public Security Department of the Ministry, is charged with crimes committed against the Kosovo Albanian population in 1999. The trial commenced in January 2009. The Prosecution is making every effort to present the case as expeditiously as possible, including by proposing to present evidence in the form of written witness statements.

16. The case against Momčilo Perišić, the former Chief of the General Staff of the VJ, began on 1 October 2008. The Prosecution expects to complete its case on schedule — before the end of September 2009 or earlier.

17. The trial of Jovica Stanišić and Franko Simatović, two high ranking members of the State Security Service in Belgrade was delayed due to the ill-health of Jovica Stanišić. The Chamber returned the case to the pre-trial phase. At the end of April, the Chamber ordered the recommencement of trial. A status conference took place on 12 May 2009. A pre-trial conference is scheduled for 18 May 2009. Opening statements are planned for 25 May 2009 and the hearing of witnesses will begin on 2 and 3 June 2009.

18. The pre-trial proceedings in the case against Radovan Karadžić are well under way. In February 2009, the Trial Chamber confirmed the Prosecution's amended indictment, which updated, clarified and further particularized the legal and factual allegations. On 8 April 2009, the Prosecution filed its interim pre-trial brief providing details of the Prosecution's case with references to the evidence it will rely on. To ensure a more efficient and expeditious presentation of its case, the Prosecution filed several motions requesting the Chamber to take judicial notice of adjudicated facts from other proceedings. As a further step to shorten the length of the trial, the Prosecution, wherever possible, will make use of written witness statements to reduce the number of witnesses to be heard in person during trial or

reduce their oral testimony, respectively. If the Chamber agrees to this procedure, the time required for the Prosecution's crime-base evidence will be significantly reduced. The trial can be expected to start after the next pre-trial conference on 20 July 2009. The Prosecution is making every effort to meet its various pre-trial obligations and to explore a shortened presentation of evidence during trial. However, Radovan Karadžić's self-representation makes it difficult to seek agreement on facts or documents.

19. During the reporting period, there have been two status conferences in *Stanišić and Župljanin*, a case against Mićo Stanišić, former Minister of the Serbian Ministry of Internal Affairs in Bosnia and Herzegovina (RS MUP) and Stojan Župljanin, Chief of the Services in Banja Luka. The Prosecution understands that the trial will begin before the summer judicial recess.

20. The *Tolimir* trial is being prepared to allow it to begin this autumn. Zdravko Tolimir, former Assistant Commander for Intelligence and Security of the Bosnian Serb Army (VRS) Main Staff is representing himself. This fact makes it hard to estimate the length of the trial. The Prosecution has proposed a total of 190 witnesses, 65 to testify in person and 125 by witness statement, as a measure to reduce the length of trial. As the *Tolimir* trial will be the fourth Srebrenica trial before the Tribunal, reliance on previously adjudicated facts may be possible if the Chamber approves. The projected length of the trial will depend in part on the usage of written evidence and could amount to 30 months.

Appeals

21. Prosecution work on appeals cases remains constant. During the reporting period, the Appeals Chamber rendered judgement in the *Krajišnik* and *Mrkšić and Šljivančanin* cases. The Prosecution will be filing appeals against five of the six accused in the first multiple-accused judgement, *Milutinović et al.*

22. The Prosecution makes every effort to file in advance of the Chamber's deadlines to promote earlier hearings. Filings are completed in the *Haradinaj et al.*, *Dragan Milošević*, *Boškoski and Tarčulovski* and *Delić* cases and the Prosecution is prepared to proceed as soon as the Appeals Chamber schedules an oral hearing. The Prosecution expects to have presented its final arguments in the *Haradinaj et al.* and *Dragan Milošević* cases before the summer court recess.

23. Over the next six months, appeals practice will continue to be very active, particularly with the briefing of the five prosecution appeals and five defence appeals arising from the *Milutinović et al.* case. In the next half of 2009, a trial judgement is expected in *Lukić and Lukić* as well as the second multi-accused case, *Popović et al.* and possibly *Gotovina et al.* The Appeals Division will then have a continuing inventory of 24 appeals cases. The appeals work is not expected to be completed before 2013.

Contempt

24. The Office continues to treat contempt of the Tribunal as a serious matter. During the reporting period, the Prosecution has brought several instances of suspected contempt to the attention of the Chambers.

25. On 2 January 2009, the Prosecution filed its notice of appeal against sentence in *Haraqija and Morina*, a contempt case arising out of the *Haradinaj et al.* case.

International cooperation

26. The Office of the Prosecutor continues to seek the full cooperation of the States of the former Yugoslavia and other States to fulfil its mandate, as required under article 29 of the Statute of the Tribunal.

Cooperation from the States of the former Yugoslavia

27. Cooperation from the States of the former Yugoslavia remains vital, particularly in the areas of (1) access to archives, documents, and witnesses; (2) the protection of witnesses; and (3) efforts to locate, arrest and transfer the two remaining fugitives and take measures against those who support them.

28. To achieve timely cooperation in these areas, during the reporting period the Prosecutor met with political and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina. In addition, the Office of the Prosecutor continues to maintain a dialogue with key officials at both the State and working levels and to develop its existing partnership with national prosecution offices.

29. Apart from cooperation between the Office of the Prosecutor and State authorities, increased cooperation in judicial matters among the States of the former Yugoslavia is necessary. A number of obstacles to such cooperation exist, including the prohibition on extraditing one State's nationals to another State and legal barriers to transferring war crimes cases between States. These impediments can threaten the successful investigation and prosecution of war crimes cases because suspects cannot be extradited and evidence cannot be shared. This situation also affects cases that should be prosecuted on the basis of investigative material transferred by the Office of the Prosecutor. All authorities concerned must urgently address these issues.

Cooperation of Serbia

30. Serbia has made additional progress in its cooperation with the Office of the Prosecutor.

31. In the past six months, Serbia's assistance in terms of access to archives and the provision of documents continued to improve. Serbia provided timely responses to the large majority of requests for assistance from the Office of the Prosecutor and has addressed nearly all important outstanding requests. Serbia's National Council for Cooperation with the Tribunal successfully led these efforts. The Office of the Prosecutor encourages Serbian authorities to ensure that this trend remains stable and irreversible. Their assistance in this regard will remain of paramount importance during the upcoming senior leadership trials, including the *Karadžić* case.

32. The Serbian authorities have responded adequately and in a timely manner to specific requests for assistance, particularly in facilitating the appearance of witnesses before the Tribunal. In specific cases, the Office of the Serbian War Crimes Prosecutor and Serbian security agencies promptly responded to requests to secure the safety of threatened witnesses by taking certain measures. As witness interference remains a serious problem and a matter of serious concern to the Office of the Prosecutor, it will continue to work closely with and rely upon the Serbian authorities when such cases are identified.

33. The most critical area of concern regarding cooperation from Serbia remains the apprehension of fugitives Ratko Mladić and Goran Hadžić. Based on currently available information, the Office of the Prosecutor believes that both fugitives are within the reach of Serbian authorities.

34. In this regard, the Office of the Prosecutor continues to follow closely the efforts of Serbian authorities to locate these fugitives and is regularly represented in coordination meetings of the Action Team in charge of tracking fugitives. During the Prosecutor's visits to Belgrade in April and May 2009, Serbian authorities fully briefed him on the security services' tracking efforts.

35. Since the arrest of Radovan Karadžić, further progress has been made at the operational level. Serbia's National Security Council and the Action Team have taken steps to ameliorate the efficacy of ongoing operations and coordination between the different government services. These services appear determined and capable to locate and arrest the remaining fugitives. Complex and widespread search operations against fugitives and their support networks are taking place. Notwithstanding certain deficiencies in recent search and seizure operations, the professionalism of the government services in charge of tracking has generally improved. Along with ground operations, a thorough review and analysis of available information is now under way. Under the previous leadership of the security and intelligence services, crucial information that could have led to the apprehension of fugitives was not acted upon. As a result, the authorities are re-analysing all information previously available and verifying all possible leads.

36. In order to achieve additional concrete positive results in the near future, the Serbian authorities must continue to provide all necessary support to the professional work done at the operational level. Therefore, the Government, its members and key officials should foster an atmosphere conducive to improved cooperation with the Office of the Prosecutor. Negative and unjustified statements calling into question the integrity of the International Tribunal are in this regard counterproductive and could have an adverse impact on Serbia's cooperation with the Tribunal.

Cooperation of Croatia

37. During the reporting period, Croatia has responded adequately and in a timely manner to the majority of requests for assistance. In addition, the Office of the Prosecutor continued to receive adequate assistance to specific requests from the Office of the Croatian State Prosecutor.

38. However, during the reporting period, the Office of the Prosecutor continued to face difficulties in securing Croatia's cooperation in the *Gotovina et al.* trial. Specifically, the Office of the Prosecutor has unsuccessfully sought to obtain a number of key military documents related to Operation Storm in 1995. Little progress has been achieved in this respect since the Office's last report to the Security Council.

39. The Office of the Prosecutor initially identified and requested a number of specific documents related to the *Gotovina* case in 2007. After numerous unsuccessful attempts to obtain these documents, at the request of the Prosecution, last September, the Trial Chamber ordered Croatia, pursuant to Rule 54 *bis*, to provide a detailed report of investigative steps undertaken to locate the requested

documents and the results obtained. During the course of the investigation, Croatia provided certain pertinent documents, including the requested special police reports, and some information relevant to determining the chain of custody of a number of documents that should have been stored in the Croatian military archives, but remain missing. However, this administrative investigation produced limited results. Moreover, Croatia continued to deny the existence of many of the requested documents. In February 2009, Croatia agreed that, of the 98 documents still sought by the Prosecution, 23 key documents were created and were missing. It agreed to further search for those as a matter of priority. In May 2009, Croatia provided additional results of the administrative investigation and supplementary information on the chain of custody of the missing documents. To date, none of the 23 key documents have been submitted. This matter remains pending before the Chamber. Since the trial is nearing completion, the Office of the Prosecutor urges Croatia to continue its investigation in a comprehensive manner and to focus its efforts on locating and providing these key documents to the International Tribunal.

Cooperation of Bosnia and Herzegovina

40. The authorities of Bosnia and Herzegovina continue to grant access to Government archives and to provide requested documents. The authorities also continue to respond adequately to specific requests for assistance, in particular, by facilitating the attendance of witnesses before the Tribunal. Authorities at both the central and entity levels have, on occasion, promptly and adequately responded to specific requests from the Office of the Prosecutor at very short notice.

41. The Office of the Prosecutor encourages law enforcement and judicial authorities of Bosnia and Herzegovina to take necessary measures against those helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate.

42. The fact that Radovan Stanković, who was indicted by the Tribunal for crimes against humanity and war crimes, including rape, remains at large is a matter of serious concern. He was transferred by the International Tribunal to Bosnia and Herzegovina in May 2005 pursuant to Rule 11 *bis* and escaped from prison two years ago while serving his 20-year sentence in Foča. The Bosnian authorities should take the necessary measures against those responsible for and involved in his escape.

43. The Office of the Prosecutor hopes that Bosnia and Herzegovina's internal political and structural difficulties will not have a negative impact on its cooperation with the International Tribunal.

Cooperation from other States and organizations

44. The Office of the Prosecutor continues to rely on States and international organizations to provide documents and information required for various trials and appeals. In addition, the international community's assistance is essential to ensuring the safety of witnesses and, when necessary, their relocation.

45. The Office of the Prosecutor appreciates the support provided by States, international and regional organizations such as the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Council of

Europe and non-governmental organizations, including those active in the former Yugoslavia. This support will remain crucial to the progress of the Tribunal's work.

Transition to domestic prosecution

46. The transfer of investigative case files and material to competent national jurisdictions is a key component of the International Tribunal's Completion Strategy. The Office of the Prosecutor further supports national prosecution efforts by facilitating access to information and evidence available in The Hague.

47. The Office of the Prosecutor maintains positive working relationships with the State Prosecutor's Office in Bosnia and Herzegovina, Croatia and the War Crimes Prosecutor's Office in Serbia. The Office of the Prosecutor interacts with counterparts on a number of matters on a frequent basis.

Rule 11 *bis* cases

48. As reported previously, the Rule 11 *bis* transfer procedures have been fully used and no further cases appear suitable for transfer.

49. Of the six cases transferred to Bosnia and Herzegovina, four have concluded with a final appellate decision; one has concluded the trial phase, and one remains pending at trial. The Office of the Prosecutor continues to assist and work closely with the Bosnian authorities to support the national proceedings in the trial of Milorad Trbić. One case transferred to Croatia has concluded its trial phase and awaits a final appellate decision from the Supreme Court of Croatia. The one case transferred to Serbia has been temporarily suspended due to the ill-health of the accused. At this time, it is unclear when or if the accused will be fit to stand trial. The Office of the Prosecutor has requested that the Serbian authorities keep abreast of the situation and inform the Office of any developments.

50. The OSCE continues to monitor trial and appeal proceedings in cases transferred to Bosnia and Herzegovina and Croatia on behalf of the Office of the Prosecutor, providing regular reports on these proceedings to the Office. These OSCE reports serve as the basis for the Prosecutor's quarterly progress reports to the Tribunal's Judges.

Transfer of investigative material to national authorities

51. The Office of the Prosecutor continues to compile and review investigative material for hand-over to the State Prosecutor's Office of Bosnia and Herzegovina. Over the past six months, the Office of the Prosecutor prepared investigative material relating to a total of 10 suspects covering three municipalities in Bosnia and Herzegovina. The Office anticipates that it will transmit all material to the State Prosecutor's Office of Bosnia and Herzegovina in 2009. Once local authorities have had an opportunity to review and assess the transferred material, the Office of the Prosecutor will continue to provide extensive follow-up assistance. Serbia and Bosnia and Herzegovina should cooperate closely to ensure the successful further prosecution of these cases and avoid conducting parallel investigations.

52. The Office of the Prosecutor also anticipates further investigation at the national level of crimes charged in a proposed amendment to an indictment rejected by the International Tribunal. Such additional charges cannot be pursued at the

Tribunal, but merit prosecution in their own right. Further investigative materials will be transmitted to the State Prosecutor's Office of Bosnia and Herzegovina for this purpose.

53. The Office of the Prosecutor continues to support international and national efforts to strengthen the Special Department for War Crimes of the State Court of Bosnia and Herzegovina. This assistance is crucial to sustaining the investigation and prosecution work of files transferred by the International Tribunal.

Requests for assistance from national judicial authorities

54. The Office of the Prosecutor responded to a total of 90 requests for assistance during the reporting period.

55. The majority (45) of the requests were submitted by national judicial authorities in the former Yugoslavia (31 from Bosnia and Herzegovina, 10 from Croatia and four from Serbia). Some of these requests were closely linked to cases against suspects tried before the International Tribunal.

56. In addition, requests from States outside the former Yugoslavia investigating war crimes committed there have increased. The Office of the Prosecutor responded to 34 requests for assistance from such States during the reporting period. These requests concerned the provision of documents and the availability of Tribunal staff to testify in domestic trials. Eight requests originated from international organizations.

57. The Office of the Prosecutor also responded to a number of applications from States of the former Yugoslavia for variations of protective measures for witnesses, ordered by the International Tribunal under Rule 75 (H). The number of such applications is expected to increase in the future.

58. Finally, delegations from prosecutor's offices, mainly from the countries of the former Yugoslavia, continue to visit the Office of the Prosecutor in search of material to support national war crimes investigations.

Capacity-building efforts and inter-State regional cooperation

59. Successful domestic prosecution of serious violations of international humanitarian law depends on States having criminal justice systems with the capacity to deal with cases the Tribunal cannot prosecute. The Office of the Prosecutor, on occasion in association with Chambers and Registry, therefore continues to assist its national counterparts in dealing with these specialized and complex prosecutions through various efforts described below. The focus of the Office of the Prosecutor in this regard is to maintain an effective partnership with prosecutors and courts in the region.

60. In cooperation with the European Union, the Office of the Prosecutor initiated a programme to allow prosecutors from war crimes and State prosecution offices from the region to be integrated into the Office of the Prosecutor in The Hague for a period of time. These national prosecutors from Bosnia and Herzegovina, Croatia, and Serbia will be based in The Hague as liaison prosecutors and have access to documents and information collected by the Office of the Prosecutor.

61. These liaison prosecutors will also have an opportunity to consult regularly with trial teams for the purposes of furthering their local war crimes investigations.

In addition, young legal professionals from the former Yugoslavia will be given an opportunity to participate in the programme. This arrangement complements the already-established internship programme allowing trainees from the region to work in the Office of the Prosecutor for periods of three to six months.

62. With the support of the European Union, the Office of the Prosecutor also organized a conference of the State and War Crimes Prosecutors of Bosnia and Herzegovina, Croatia, Serbia, Montenegro and the former Yugoslav Republic of Macedonia in Brussels on 2 and 3 April 2009. While in a number of cases prosecutors have cooperated well, parallel investigations remain a problem where evidence is held by one country, but the suspect resides in another country. Progress has been achieved in developing case inventories using compatible software. Legal and technical agreements between the various prosecutors' offices will be needed to regulate access to such case inventories and stored information.

63. As mentioned earlier, however, legal barriers to extradition of suspects and evidence transfer across State lines continue to prevent effective investigation in many instances. States must urgently address this "impunity gap" and make the necessary changes to the governing legal frameworks in which they operate. The Office of the Prosecutor remains strongly engaged in supporting such initiatives at the regional level.

64. The Office of the Prosecutor continues to participate in the meetings of the European Network of Contact Points on Genocide, Crimes against Humanity and War Crimes. The Office of the Prosecutor also regularly participates in meetings with other international prosecution offices with the aim of sharing information, expertise and best practices.

Management of resources

65. The timely and efficient completion of trials and appeals remains the top priority for the Office of the Prosecutor. While sufficient resources are required to complete the remaining important and complex trials up to 2011 and appeals up to 2013, a serious downsizing plan will be implemented. As the trials and appeals work progresses, and based on current projections for future cases to be handled, a substantial reduction in staffing levels and non-post items is expected commencing in early 2010. The downsizing process will continue progressively in the next two years in line with the conclusion of trials. These plans will be part of the next biennial budget for 2010-2011.

66. The Office of the Prosecutor has developed criteria to ensure a smooth and efficient gradual downsizing process. It remains fully committed to the Completion Strategy, but must stress that in any downsizing programme, the organizational requirements of the Office to fulfil its mandate are considered paramount. The Prosecutor will endeavour to accommodate the needs of staff in the process whenever possible.

67. The Prosecutor is appreciative of the dedication and commitment of his staff who are key to the successful completion of the mandate. As the completion of the Tribunal's work draws near, a number of staff members have already left the Office and sought employment that offers more long-term stability. More staff members are expected to leave the Office in the future. As the workload remains high, the loss of

institutional specialized knowledge and the difficulty in hiring experienced staff to complete remaining trials may become a major challenge. The retention of highly qualified staff members in the Office of the Prosecutor therefore remains critical to the successful completion of trials and appeals. Along with the President and the Registrar, the Prosecutor supports initiatives to find ways to retain qualified staff until the completion of the Tribunal's mandate.

68. In close consultation with the President and the Registrar, the Prosecutor remains engaged in the discussion on the establishment of an international residual mechanism and the future location of the Tribunal's archives. The Tribunal should continue to exist in its current form, albeit downsized, until completion of trials and appeals. A Residual Mechanism could commence its work thereafter. Consultations in this regard continue with the Security Council and the Secretariat.

Conclusion

69. During the last six months, the Office of the Prosecutor has remained fully committed to the timely completion of trials and appeals and the International Tribunal's Completion Strategy goals. Although considerable progress has been achieved, several unforeseeable events have caused some additional delay in the trial schedule. State cooperation has improved, but a number of outstanding issues remain, including access to documents and archives and the arrest of fugitives. The cooperation of States remains critical for the timely and successful completion of the Prosecution's work.

70. The Office of the Prosecutor continued to develop partnerships with national prosecutors dealing with war crimes cases. A concrete example is the new joint project between the European Union and the International Tribunal enabling liaison prosecutors and interns from the region to work in the Office of the Prosecutor. National prosecution offices will also continue to require the assistance and support of the international community for the prosecution of war crimes cases at the domestic level.

71. In the coming months, the Office of the Prosecutor will continue planning for further downsizing and reduction of its resources. To cope with the complexity of remaining current and upcoming trials and appeals, the retention of qualified staff members working on these cases will remain a serious challenge during the downsizing process.

72. As work progresses, the continuing support of the international community and especially the Security Council of the United Nations remains essential for the Office of the Prosecutor to fulfil its completion strategy goals.